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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,296	10/31/2001	Thomas D. Benson	10004991 -1	8164

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
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EXAMINER

FISCHETTI, JOSEPH A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/004,296	Applicant(s) BENSON, THOMAS D.	
	Examiner Joseph A. Fischetti	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-29 is/are pending in the application.
- 4a) Of the above claim(s) 25-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Ck

Election/Restrictions

Applicant's arguments have been noted, but still fail to show how the restriction is improper. Most notably, left unanswered is how Applicant in good conscious can continue to press for review of this restriction when claim 21 recites a performance based supply system making no reference to an additional confirmation feature, and claim 25 recites an additional confirmation method making no reference to any performance feature, rendering these two claims clear subcombinations of one another. The restriction is Final.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the term "performance" is being used. The term would seem to connote use of quality or standards but nothing has been recited to quantify this term.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21,22,24 are rejected under 35 U.S.C. 102(b) as being anticipated by Graves et al.

Graves et al. disclose code which processes a processor operable to determine a required quantity of material (processing unit 106); a means for communicating with at least one supplier of said material (voice card, modem interface or facsimile col. 7 lines 1-15), wherein said communication includes conveying to said at least one supplier said quantity and a time frame (col. 6 lines 53-55 purchase order releases are scheduled) and receiving from said at least one supplier a confirmation (col. 7. lines 7-10, supplier confirms shipments); computer readable code processed by said processor (106), wherein said code is operable to re-determine said required quantity using feedback relating to a performance of at least one supply chain participant (the one supply chain participant is read as the customer and its “performance” is read the functioning of the facility which as a result draws down on the tank supply see col. 17, lines 28-37 for feedback feature) .

RE claim 22. see col. 17 lines 28-30 for disclosure of the feedback includes a comparison between an actual run rate and a corresponding anticipated run rate.

Re claim 24: see col. 17 lines 30-31, discloses is a product forecast.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves et al (H1743) in view of Gung et al.

As set forth above, Graves et al. discloses the subject matter of claims 22,23, and 24, but applicant challenges the use of performance in graves et al. as a standard for forecasting supply. However, Gung et al. in col. 3 lines 16-19 discloses forecasting demand based upon performance. It would be obvious to modify the Graves to use a performance factor to determine supply forecasting because factors, such as, transportation reliability, and raw material availability would be considered. Such raw material availability (production yield) would be an obvious standard for comparison in the feedback system because the motivation for this would be a basic standard which need to be met (re: claim 24). That is, it is common knowledge that in a feed back system there must exist a standard or threshold against which the feedback signals are

compared. It is contemplated to use the model based value of Gung to set the threshold of the feed back system in Graves to make it have a more efficient target.

REPLY

Applicant's arguments filed 7/7/05 have been fully considered but they are not persuasive.

Applicant's arguments have not diminished the examiner's position on the vagueness of the 112 2nd paragraph rejection, but rather have strengthened them. Applicant has argued the performance definition in two contexts in his last response evidencing the vagueness of the term. More specifically, in regards to the Graves reference, Applicant argues that 'a comparison of an actual level in a tank to a level that was projected monitors how the tanks is [sic] used - not how it is supplied.' Thus, in these terms, applicant ties performance to how something is supplied. Then, in regards to Gung, performance is contemplated in the context of a "speculative forecast model". Nowhere does applicant make reference to the real issue at hand, what applicant intends as the definition of the term performance.

Second, regarding the rejection of Graves under 102 b, applicant argues "nothing about monitoring the level pertains to the performance...". However, the dictionary definition of performance would indicate otherwise.

Merriam Webster's Collegiate Dictionary 10th
Ed. Defines as it as 1 a: the execution of an
action. b something accomplished.

The removal of oil from a tank is clearly the execution of an action, namely, the taking out of a product. Even still, something is being accomplished, namely oil being removed. There can be no doubt as to the dictionary definition applying to the Graves method.

Lastly, the combination of Graves and Gung is proper because the motivation given namely to create a "basic standard" upon which the feed back could be met is provided for by Gung. More particularly, it is common knowledge that in a feed back system there must exist a standard or threshold against which the feedback signals are compared. It is contemplated to use the model based value of Gung to set the threshold of the feed back system in Graves to make it have a more efficient target. Also, the feature of re-determining a required quantity using feedback is not taken from Gung, it is that part of Graves which stands unmodified, as is clear from the office action.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

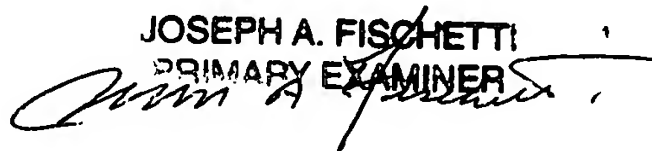
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to Joseph A.

Fischetti at telephone number (703) 305-0731.

JOSEPH A. FISCHETTI
PRIMARY EXAMINER


Joseph A. Fischetti
Primary Examiner
Art Unit 3627